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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1961.

No. 369.

JAMES I. WOOD,
Petitioner,

vs.

THE STATE OF GEORGIA,
Respondent.

On Writ of Certiorari to the Court of Appeals of Georgia.

BRIEF FOR RESPONDENT.

EUGENE COOK,
Attorney General,
40 Capitol Square,
Atlanta, Georgia.

E. FREEMAN LEVERETT,
Deputy Assistant Attorney General,
Elberton, Georgia.

WILLIAM M. WEST,
Solicitor General,

JACK J. GAUTIER,
Assistant Solicitor General,
Court House,
Macon, Georgia.

Attorneys for State of Georgia,
Respondent.

St. Louis Law Printing Co., Inc., 415 N. Eighth Street, Phone CH 1-0

INDEX.

	Page
I. Opinion Below and Jurisdiction	1
II. Constitutional and Statutory Provisions	2
III. Questions Presented	2
IV. Statement of the Case	3
V. Summary of Argument	12
VI. Argument	14
VII. Conclusion	32
VIII. Appendix	33

TABLE OF AUTHORITIES.

Cases.

Adams v. State, 89 Ga. App. 882, 81 S. E. 2d 507 (1954) 16

American Communications Association v. Douds, 339 U. S. 382, 399, 94 L. Ed. 925 (1950) 20

Atlanta Newspapers, Inc. v. Grimes, 216 Ga. 74, 78, 114 S. E. 2d 421 (1960) 16

Atlanta Newspapers, Inc. v. State, 101 Ga. App. 195, 113 S. E. 2d 148 (1960) 16, 18

Atlanta Newspapers, Inc., v. State, 216 Ga. 399, 116 S. E. 2d 580 (1960), noted, 14 Vand. L. R. 1013 (1961) 18

Barbuto v. Silver, 186 N. Y. S. 2d 1018, 1023 (1959) .. 25

Bridges v. California, 314 U. S. 252 (1944) .12, 14, 20, 22, 27

Carr v. State, 28 Ala. App. 466, 187 So. 252 (1939) .. 18, 19

Cassell v. Texas, 339 U. S. 282 (1950) 19

Clark v. State, 90 Ga. App. 330, 83 S. E. 2d 45 (1954) 16
Cobb v. State, 59 Ga. App. 695, 25 E. 2d 116 (1939) .. 16
Commonwealth ex rel. Davis v. Malbon, 195 Va. 368, 78 S. E. 2d 683 (1953) 25
Commonwealth v. Butler, 171 Pa. Super. 350, 90 A. 2d 838, 841 (1952) 17
Commonwealth v. Chmielinski, 246 Mass. 55, 140 N. E. 258 (1923) 17
Commonwealth v. Crans, 2 Clark 172, 183, 3 Pa. Law J. 442, 451 (1844) 17, 18
Commonwealth v. McNary, 246 Mass. 82, 140 N. E. 255 (1923) 17, 19
Cook v. Sikes, 210 Ga. 722, 82 S. E. 2d 641 (1954) ..17, 28
Cox v. New Hampshire, 312 U. S. at 574 20
Craig v. Harney, 331 U. S. 367, 91 L. Ed. 1546 (1947) 14, 20, 22, 23, 27, 28

Dorrance v. Pennsylvania, 287 U. S. 660, 77 L. Ed. 570 (1932) 31
Drewry v. State, 208 Ga. 239 (1), 65 S. E. 2d 916 (1951) 30
Dukes v. United States, 90 F. 2d 840, 842 (C. A. 4th 1937) 19

Elder v. Camp, 193 Ga. 320, 18 S. E. 2d 622 (1942) .. 26
Eubanks v. Louisiana, 356 U. S. 584, 2 L. Ed. 2d 991 (1958) 12, 19
Ex Parte Shuler, 210 Cal. 377, 292 P. 481; 493 (1930) .17, 27

Fay v. New York, 332 U. S. 261, 91 L. Ed. 2043 (1947) 19
Foster v. Vickery, 202 Ga. 55, 42 S. E. 2d 117, 120 (1947) 26

Gates v. State, 73 Ga. App. 824, 38 S. E. 2d 311 (1946) 17

Hannah v. Larche, 363 U. S. 419, 4 L. Ed. 2d 1307 (1960) 21, 22
Harding v. McCullough, 236 Iowa 556, 19 N. W. 2d 613, 617 (1945) 18, 24

Hartford Life Ins. Co. v. Johnson, 249 U. S. 490, 492, 63 L. Ed. 722 (1919) 30
Hitzelberger v. State, 173 Md. 435, 196 A. 288, 291 (1938) 19

In re Attachment for Contempt of Mack, 37 West. 127, 17 Som. 221 18
In re Caruba, 139 N. J. Eq. 404, 51 A. 2d 446, aff'd 55 A. 2d 289 (1947) 18
In re Chaifetz, 68 A. 2d 228 (D. C. Mun. Ct. of App. 1949) 18
In re Fite, 11 Ga. App. 665, 76 S. E. 397 (1912) 16
In re Michael, 146 F. 2d 627 (c. c. 3rd 1944), rev'd. on other grounds, 326 U. S. 224, 90 L. Ed. 30 (1945) .. 17
In re Presentment of Ellison, 44 F. Supp. 375 (D. C. Del. 1942), aff'd. 133 F. 2d 903 (c. c. 3rd 1943), cert. den. 318 U. S. 791 17
Ivestor v. Coe, 33 Ga. 620, 127 S. E. 790 (1925) 29

Kingsley Books, Inc., v. Brown, 354 U. S. 436, 441, 1 L. Ed. 2d 1469 (1957) 20
Konigsberg v. State Bar of California, 362 U. S. 910, 4 L. Ed. 2d 618 (1961) 21

Levine v. United States, 362 U. S. 610, 4 L. Ed. 2d 989 (1960) 17

Maryland v. Baltimore Radio Show, 338 U. S. 912, 94 L. Ed. 562 (1950) 23
McGill v. State, 209 Ga. 500, 504, 74 S. E. 2d 78 (1953) 15

Nye v. United States, 313 U. S. 33, 85 L. Ed. 1172 (1941) 18

Patterson v. Colorado, 205 U. S. 454 (1907) 13, 23, 32
Pennekamp v. Florida, 328 U. S. 331, 90 L. Ed. 1295 (1946) 14, 20, 22, 23, 27, 28
People ex rel. Rusch v. Levin, 305 Ill. App. 142, 26 N. E. 2d 895, 898 (1939) 25

People v. Doss, 382 Ill. 307, 46 N. E. 2d 984, 989 (1943), cert. den. 320 U. S. 762 (1943) 19, 27
People v. Gholson, 344 Ill. App. 199, 100 N. E. 2d 343 (1951), rev'd on other grounds 106 N. E. 2d 333, 412 Ill. App. 294 (1952) 27
People v. Hagopian, 408 Ill. 618, 97 N. E. 2d 782 (1951) 18
People v. Higgins, 16 N. Y. S. 2d 302, 307, 173 Misc. 96 (1939) 18
People v. Parker, 328 Ill. App. 46, 65 N. E. 2d 457 (1946), aff'd 333 U. S. 571 18
People v. Parker, 374 Ill. 524, 30 N. E. 2d 11 (1940) .. 19
People v. Parker, 397 Ill. 305, 74 N. E. 2d 528 (1947), aff'd, 334 U. S. 816, 92 L. Ed. 1747 (1948), noted, 39 Jour. Cr. L. 72 (1948) 19
People v. Severinghaus, 313 Ill. 456, 145 N. E. 220 (1924) 19

Renfro v. State, 104 Ga. App. 362, 364 (1961) 12, 16
Rescue Army v. Municipal Court, 331 U. S. 549, 91 L. Ed. 1666 (1947) 31
Re Savin, 131 U. S. 267, 272, 33 L. Ed. 150 (1889) 18

Shepherd v. Florida, 341 U. S. 50, 55, 95 L. Ed. 745 (1951) 23
Sinclair v. United States, 279 U. S. 749, 762, 73 L. Ed. 938 (1929) 27
Speiser v. Randall, 357 U. S. 513, 520, 2 L. Ed. 2d 1460 (1958) 20
State ex rel. Gibben v. Sullivan, 157 Fla. 496, 26 So. 2d 509, 516 (1946) 27
State v. Goff, 228 S. C. 17, 88 S. E. 2d 788 (1955) 18
State v. McAllister, 43 N. M. 514, 96 P. 2d 1, 3 (1939) 27
Summers v. State, 66 Ga. App. 648, 19 S. E. 2d 28 (1942) 27

Toledo Newspaper Co. v. United States, 247 U. S. 402, 424, 62 L. Ed. 1186 (1918) 22

Townsend v. State, 54 Ga. App. 627, 631-2, 188 S. E. 560 15
United Brotherhood v. N. L. R. B., 357 U. S. 93, 1 L. Ed. 2d 1186 30
United States v. Kilpatrick, 16 Fed. 765, 770 (D. C. N. C. 1883) 18
United States v. Providence Tribune Co., 241 Fed. 524 (D. C. R. I., 1917) 17, 20
United States v. Smyth, 104 F. Supp. 283 (D. C. Cal. 1952) 17, 19, 25
United States v. United Mine Workers, 330 U. S. 258, 294, 91 L. Ed. 884 (1947) 23, 24
Whitney v. California, 274 U. S. 357, 362, 71 L. Ed. 1095 (1927) 30
Wood v. State, 103 Ga. App. 305, 119 S. E. 2d 261 (1961) 8
Yakus v. United States, 321 U. S. 414, 88 L. Ed. 834 (1944) 30

Statutes.

Ga. Code Ann., Sections 34-9907, 34-1907.1, 24-104, 24-105, 24-2813, 24-2804, 24-2814, 59-303, 59-304 ..... 2, 4, 12, 16, 21, 26, 27
Ga. Code, Secs. 105-708; 26-2103 29
18 U. S. C., Sections 401, 1504, 597 ..... 2, 12, 16, 19, 21, 26

Miscellaneous.

12 Am. Jur. 403, Sec. 21 19
12 Am. Jur. 417, Sec. 37 27
Anderson on Sheriffs, Sec. 2 25
"A Re-Examination of Bridges v. California," 23 Alb. L. R. 61 (1959) 22, 23
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Atlanta Constitution, March 19, 1896 21
Atlanta Journal, Sept. 12, 1961, p. 2 21
4 Blackstone's Commentaries 283 25
Coulter, The South During Reconstruction (1947), pp. 356, 357 21
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Ga. House Journal, 1900, p. 10 21
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Georgia Constitution of 1945, Art. I, Sec. I, Par. XX (Ga. Code Ann., Sec. 2-120) 2
Georgia Constitution of 1945, Art. I, Sec. II, Par. I.. 29
30 Geo. L. J. 406, 408 (1942) 18
38 Jour. Cr. L. 43 (1947) 19
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Macon Telegraph, April 22, 1960 31
45 Mich. L. R. 513 (1947) 22
Notre Dame L. R. 165 (1959) 23
19 N. Y. U. L. Q. 307, 310 (1942) 22
Rule 23 (1) (e) 30
90 U. Pa. L. R. 617 (1942) 22

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BRIEF FOR RESPONDENT.

I.

OPINION BELOW AND JURISDICTION.

Respondent adopts by reference the paragraphs of Petitioner's brief designated "Opinion Below" and "Jurisdiction".

II.

CONSTITUTIONAL AND STATUTORY PROVISIONS.

The Constitutional and statutory provisions pertinent to this case are as follows: Ga. Constitution of 1945, Art. I, Sec. I, Par. XX (Ga. Code Ann., Sec. 2-120); Ga. Code Ann., Sections 34-9907, 34-1907.1, 24-104, 24-105, 24-2813, 24-2804, 24-2814, 59-304, 18 U. S. C., Sections 401, 1504, 597. These provisions are set forth in an Appendix hereto.

III.

QUESTIONS PRESENTED.

1. Whether the Court below properly applied the clear and present danger test in petitioner's conviction for contempt when it is seen that the contemptuous statements (a) Were made from the same courthouse where the grand jury was deliberating, (b) By an officer of court whose duties as the highest law enforcement official in the county required him to attend upon and render assistance to the grand jury he was seeking to influence, (c) While the investigation was then pending, and were communicated to and read by members of the grand jury during consideration of the matters given it in charge by the court, and (d) Were calculated to interfere with and deter the jury from an investigation it was then conducting pursuant to a valid and fair charge by the court.

2. Whether petitioner properly raised in the state courts the defense of truth he is now asserting in this Court.

IV.

STATEMENT OF THE CASE.

On June 6, 1960, the beginning of the June Term of Bibb County Superior Court, one of the three judges of that Court delivered a charge to the Grand Jury just impaneled in which it was instructed to investigate charges relative to criminal violations of the voting laws. The charge pointed out that:

> "There are accusations that candidates for public office have paid large sums of money to certain leaders of the Negro in an effort to gain their favor and get the Negro vote. There are accusations that candidates and their supporters have paid, and these leaders of the Negroes have accepted, money for the purpose of influencing the Negro people to bloc vote for certain candidates. This money is supposedly accepted for expenses of newspaper advertisements, radio announcements, letters, workers, etc., in the solicitation of the Negro vote, but there is no doubt that, when the vast majority blindly follow the leaders and vote as they are told it actually amounts to a purchase of thousands of votes by the favored candidate. The candidates know this and the Negro leaders know this, therefore, these leaders and candidates are in a position to traffic and trade with thousands of votes.
>
> "There are also accusations that certain Negro leaders after having met with a candidate and endorsed his candidacy have changed and supported an opposing candidate who put up a large sum of money. This creates an unhealthy, dangerous and unlawful situation.
>
> "This sort of practice, if it is true, strikes at the very foundation of our government and will ultimately

destroy it if permitted to continue unabated. It tends to corrupt public office holders and some candidates for public office. It puts in the hands of a few people the power to corrupt and this should not be allowed. As has been said 'the only thing necessary for the triumph of evil is that good men do nothing'" (R. 7-8).

The Court then instructed the Jury with respect to the Code, Section 34-9907, relating to the buying of votes, and Section 34-1907.1 (Supp.), relating to possession of ballots or any likeness thereof. The Jury was told:

"Some questions which this Jury should have answered in your investigation of elections are: Was the Negro vote delivered in bloc to any candidate or candidates? If so, who delivered it and how was it done? What contact did the candidates or their supporters have with the Negro group or its leaders? What money was involved, if any? How was the money used? What workers were employed? What promises did the candidate make, if any, in order to obtain the bloc vote?" (R. 11.)

Lastly, the Court declared:

"Now, gentlemen, it should be emphasized, and you cautioned, that the Court has only one desire in bringing this matter to the attention of the Grand Jury and that is to insure that every person who offers as a candidate for public office in this county shall have the right to a fair and honest election on the merits of the candidate and on his platform and that he shall not be defeated or elected by unfair, corrupt or unlawful practices by any person or group of persons regardless of who they are.

"Now, gentlemen, it is your duty to develop the facts of this situation and if there is sufficient evi-

dence of unlawful acts, then all parties participating, white and colored, candidates or non-candidates, should be indicted by this Grand Jury so that the guilty parties, if there are any, may be brought to trial.

"Furthermore, it is your duty to bring to light those practices which, while not technically in violation of any law, are yet so immoral or corrupt as to be destructive of the purposes of our system of elections. It is further your right and duty to determine what additional laws, or amendments to existing laws, are needed to adequately deal with the situation with which we are faced and to recommend enactment thereof by the Legislature" (R. 11-12).

The next day, June 7, while the grand jury was considering these very matters given it in charge, petitioner, sheriff of Bibb County, released to local news media a press statement in which he accused the court of "persecution", "race agitation", a "crude attempt at judicial intimidation of Negro voters and leaders", and "political-legal action" (R. 12).

More specifically, petitioner charged that,

"Negro people will find little difference in principle between attempted intimidation of their people by judicial summons and inquiry and attempted intimidation by physical demonstration such as used by the K. K. K.

"It is hoped that the present Grand Jury will not let its high office be a party to any political attempt to intimidate the Negro people in this community.

"It seems incredible that all three of our Superior Court judges, who themselves hold high political office, are so politically naive (sic) as to actually believe that the Negro voters in Bibb County sell their votes in any fashion, either to candidates for office or to some Negro leaders.

> "If anyone in the community be free of racial prejudice, it should be our judges. It is shocking to find a Judge charging a Grand Jury in the style and language of a race baiting candidate for political office" (R. 13).

This press release was made in the sheriff's office located in the same courthouse in which the grand jury was deliberating (R. 14), was made while the grand jury investigation was still pending (R. 5), and was read by members of that jury during their deliberations thereon (R. 45).

The very next day, June 8, petitioner also delivered to the bailiff stationed at the entrance to the grand jury room, "An Open Letter to the Bibb County Grand Jury", implying that the Judge's charge was false and declaring that it was really the Bibb County Democratic Executive Committee which was guilty of corruption in the purchasing of votes (R. 17).

Approximately one month later on July 7, the Solicitor General filed a petition for contempt charging the issuance of the "news release" while the grand jury investigation was still pending, and asserting that it was done in a course of action designed and calculated to "hamper, hinder, interfere with and obstruct the said Grand Jury and the said Court in the said investigation ordered" (R. 5).

The petition was subsequently amended to allege that the news release was issued from the Sheriff's office located in the same courthouse where the charge was given and the grand jury investigation was then in progress (R. 14); that the news release was made at the very time the jury had before it records and documents relating to elections in which petitioner had participated; that the press release was actually read by members of the jury during their investigation; and that petitioner's action

"created and presented a clear, present and imminent danger to the investigation being conducted by the Bibb County Grand Jury into the matters about which it had been instructed by the Court, and further presented a clear, present and imminent danger to the proper administration of justice in Bibb Superior Court" (R. 42-3).

In the meantime, the day following the filing of the original petition for Contempt, to wit, July 8, petitioner had issued another press release asserting that his defense would be "truth", and again repeating, in substance, the charges he had previously made; declared that the judges were "wrong" to cite him for contempt; and concluded by charging that the judges had stirred up "ill will and race agitation" and presented "grossly false and discrediting conclusions . . . ." (R. 19-20).

The petition for contempt was thereafter amended on July 28, so as to add two new counts, Count II charging contempt in transmitting the "Open Letter" to the grand jury[1], and Count III charging contempt in issuing the second news release (R. 15-17). As finally amended, Count III alleged that the second news release was issued from petitioner's office in the same courthouse where the grand jury was at that time investigating the matters about which it had been charged; that the investigation was then pending; that "The making and publishing of said statement amounts to an interference in a pending case and the orderly processes of the Court in respect thereto, and constitutes an effort to obstruct justice and is itself a contempt of Court" (R. 15-17); and that petitioner's action "created and presented a clear, present and imminent danger to the investigation being conducted by the Bibb County Grand Jury . . . ."; and that the press re-

[1] The Court of Appeals of Georgia reversed petitioner's conviction on this count, and hence it does not appear in the record, although the news release upon which it was based is found in the record at pages 19-20.

lease was actually read by members of the grand jury while it was still conducting its investigation (R. 43-4).

Petitioner filed demurrers (R. 21-37) and Response (R. 37-42). The responses admitted all allegations as to issuance of the public news releases, the fact that they were issued pending the investigation, and that they were issued in the same courthouse where the Court's charge was given and the grand jury was then sitting (R. 37, 41). The responses took issue with the petition mainly as to the purport and effect of petitioner's statements (R. 38-41). While one ground of petitioner's demurrers attacked the petition for failing to allege that the statements were false or untrue (R. 22, 30), petitioner nowhere in his responses asserted truth as a defense.

The demurrers were heard on August 5, 1960, and order overruling them was rendered on August 10 (R. 44). On that same day, counsel for the respective parties stipulated in writing that at the time petitioner issued his first press release, the grand jury was then considering voting records, and that both press releases were read by members of the grand jury while the investigation was in progress (R. 45).

The case was then adjourned until the following day when a hearing on the merits was had.

Petitioner offered no evidence to sustain any of the allegations of his response, nor undertaking to prove "truth" as a defense. Following the hearing, the trial judge rendered judgment adjudging petitioner guilty on each count, and imposing concurrent sentences of 20 days and separate fines of $200.00 on each count (R. 48).

On writ of error to the Court of Appeals, the convictions on Counts I and III were affirmed, and the conviction on Count II was reversed. **Wood v. State**, 103 Ga. App. 305, 119 S. E. 2d 261 (1961).

As to Count 1, the Court declared in Head Note 1:

> "(b) The grand jury is a constituent part of the court, and anyone whose conduct interferes with, or has a tendency to obstruct the grand jury, or endeavors to interfere with the performance of its duties may be found in contempt" (R. 59).

In the body of the opinion dealing with this Count, the Court several times emphasized the fact of "interference" with the grand jury (R. 61, 62), and concluded:

> "The language of the news release, the basis of Count 1 of the citation for contempt, charged the judges of the superior court with threatening political persecution under the guise of law enforcement, and further charged them with bias against a minority group, and compared the effect of the instructions to the grand jury with the attempted intimidation as used by the Ku Klux Klan against this group. It is obvious that this was intended to interfere with or obstruct the grand jury in its investigation of the charges which the court had given to them. In this respect, it is the proper function of the judge to charge the grand jury. It is not the prerogative of the sheriff to either charge the jury or to interfere with the judge's charge" (R. 65).

The late Presiding Judge Townsend, concurring as to the affirmance on Count 1, declared that the right to speak, although privileged in many instances, can not exist "when the words are directed toward the impeding of a judicial proceeding presently in progress" (R. 72). Judge Townsend further declared:

> "I agree that count 1 relating to a newspaper article written by the sheriff, a man associated in the minds of many lay people with the pronouncement as well as the enforcement of the law, accusing the judge

of instructing the grand jury to ferret out certain crimes relating to possible bribery, not in accordance with his duty to so instruct the jury, but as a cover for personal reasons aimed at stirring up race prejudice, is a contempt of the court and the grand jury, necessarily calculated to impede the administration of justice, and should be punished as such" (R. 72).

With respect to Count III, the Court stated in Head Note 3 that:

"(f) The act of the judge in charging the grand jury with its duties is a judicial act, and an improper interference therewith may be found to be contempt of court" (R. 51).

In the body of the opinion, it was said:

"When the defendant disseminated this accusatory statement to the public news media in an apparent effort to hamper the grand jury which was still considering the charges given it by the court, this conduct could properly be found by the court below to constitute a 'contempt" (R. 66-67).

• • •

"With respect to the question as to whether these acts of the defendant constituted a clear, present, or imminent danger or serious threat to the administration of justice, it is to be noted that the citation as amended so charges, the court below has by its conviction so found, and the evidence supports the finding" (R. 67).

• • •

"We do not intend by this decision to hold that the opinions, the judgments, the proceedings of the courts, or the judges themselves, are under any and all circumstances exempt from objection or remonstrative criticism. But where, as here, the three judges in-

volved acted jointly, and in their place proceeded within the ideals and the letter of the law, and where, as here, there were vitriolic attacks upon the motives, judgment, and biases of these judges, and all this carried on by the sheriff, an officer of the law and of the court, at times during which the grand jury properly had before it for consideration the charge of the court, we can only conclude that the sheriff's intemperate actions constituted contempt and the convictions on counts 1 and 3 were proper" (R. 70).

The conviction on Count II was reversed because it "failed to meet" the "clear and present danger" test established by this Court and previously followed by the Georgia Supreme Court and Court of Appeals (R. 65-6).

The Supreme Court of Georgia denied certiorari without opinion on May 22, 1961 (R. 75). A motion for reconsideration was filed in the Georgia Supreme Court from this denial which sought to raise for the first time the contention that petitioner had been denied the opportunity to present any defense against the charges (R. 77).

This Court granted certiorari on November 6, 1961 (R. 79).

V.

SUMMARY OF ARGUMENT.

1. Both the trial court and the Court of Appeals in this case applied the "clear and present danger" rule established by this Court for contempt cases in **Bridges v. California**, 314 U. S. 252 (1944), and neither court below purported to be following the common law "scandalizing the court" doctrine. Prior decisions of the Georgia courts recognized and applied the clear and present danger test, and in a case decided subsequently to the Court of Appeals' decision in this case, it was cited as being an application of that test. **Renfroe v. State**, 104 Ga. App. 362, 364 (1961).

2. The grand jury is an arm of the court, and any interference therewith, such as efforts to influence its proceedings, is punishable by contempt, where the requirements of clear and present danger are met, for it is the function of the court, and no one else, to charge the grand jury. In this respect, there is little difference between a grand and a petit jury. Cf. **Eubanks v. Louisiana**, and citations. Federal law expressly declares as a crime any effort to influence a grand jury, 18 U. S. C. A. 1504, and state authorities uniformly hold such acts to be punishable as contempt. Considering the legitimate governmental interest to be protected, the nature of the statements, the fact that they were made while the investigation was in progress and were actually communicated to the fact-finding body of laymen, the requirements of clear and present danger are satisfied. Independently of this, petitioner was an officer of court in the strictest sense, and as such, subject to disciplinary action by contempt. Ga. Code, Sec. 24-105, and cf. 18 U. S. C. A. 401.

3. The clear and present danger test does not require proof that the attempt to influence or interfere with the

grand jury was successful, for it is impossible to determine what effect such interference may have had. The test is clear and present danger of obstruction, not that the effort was successful.

4. While this Court has held that truth is no defense to a charge of criminal contempt, for "even a correct conclusion is not to be reached or helped in that way," **Patterson v. Colorado,** 205 U. S. 454 (1907), petitioner has at no time sought to prove truth as a defense, nor has he been prevented from so doing, the extent of the Court's ruling on this issue being an overruling of his demurrers which complained that the petition for contempt failed to **allege** the contemptuous statements to have been false.

VI.

ARGUMENT.

1. "Clear and Present Danger", Not "Scandalizing the Court", Was the Rule Applied Below.

Having very cleverly fabricated a straw man, petitioner's brief then proceeds to demolish it with dispatch. The argument is made that the Court of Appeals of Georgia, completely oblivious of this Court's decisions in the **Bridges, Craig** and **Pennekamp** cases, has predicated its decision in this case upon the common law "scandalizing the court" rule. A study of the record refutes this contention.

The petition for contempt as amended expressly charged a clear and present danger to the pending grand jury investigation (R. 43, 44). Throughout, emphasis was placed in the pleadings on the fact that petitioner's acts were all committed while the investigation was then in progress (R. 5, 15, 16), and that his remarks were actually communicated to the jurors while they were considering the very matter dealt with in petitioner's press releases (R. 43, 44, 45).

In the syllabus to its decision upholding the conviction on Counts I and III, the Court of Appeals placed emphasis upon the fact of "interference" (R. 51-1), as did the body of its opinion (R. 61, 62, 65). In a part of its opinion stated by the Court to be applicable to both Counts, the Court of Appeals stated:

> "With respect to the question as to whether these acts of the defendant constituted a clear, present, or imminent danger or serious threat to the administration of justice, it is to be noted that the citation as amended so charges, the court below has by its conviction so found, and the evidence supports the finding" (R. 67).

The Court of Appeals expressly recognized that the actions of courts are not immune from criticism at appropriate times (R. 70) as did a concurring Judge (R. 72).

Equally significant is the fact that the conviction on Count II was reversed because "Count II must stand alone to meet the test of whether it constitutes a 'clear and present danger to the administration of justice' . . . and it fails to meet this test" (R. 66). The two judges who dissented from the reversal on Count II did so not because of disagreement with the rule, but merely with its application (R. 74).

As early as 1936, the Georgia Court of Appeals rejected the "scandalizing the court" rule. See **Townsend v. State**, 54 Ga. App. 627, 631-2, 188 S. E. 560. In **McGill v. State**, 209 Ga. 500, 504, 74 S. E. 2d 78 (1953), the Supreme Court of Georgia applied the "clear and present danger" test in an opinion which declared:

> ". . . The rule at common law was broader than the rule in this State, and no doubt lawyers and judges have been led into error by considering the common law only without taking into account our constitutional guaranties of free speech and liberty of the press. Merely writing contemptuously about a judge is constructive contempt under the common law, but this rule is founded upon the theory that the judge is the representative of the king, who it is assumed can do no wrong and, hence, the acts of the judge are beyond question. Free speech and liberty of the press in our system of popular government are diametrically opposed to any theory that any public officer shall be immune to criticism and searching examination of his official conduct. The freedom of the individual might well depend upon the unshackled discussion of all matters affecting the public, especially the conduct of those who fill positions of public trust, and this includes the judges of our courts."

The test has been applied in a number of other cases. **Adams v. State**, 89 Ga. App. 882, 81 S. E. 2d 507 (1954); **Clark v. State**, 90 Ga. App. 330, 83 S. E. 2d 45 (1954); **Atlanta Newspapers, Inc. v. State**, 101 Ga. App. 105, 113 S. E. 2d 148 (1960); **Renfroe v. State**, 104 Ga. App. 362, 364, ... S. E. 2d ... (1961), citing the Wood case for the "clear and present danger" rule, and see **Atlanta Newspapers, Inc. v. Grimes**, 216 Ga. 74, 78, 114 S. E. 2d 421 (1960).

At pages 8-10 of petitioner's brief, reference is made to certain language which, it is asserted, demonstrates that the Court of Appeals below was applying the "scandalizing the court" test. But petitioner fails to point out that all of these quotes were not taken from the language of the Court of Appeals in this case, but were quotes taken either from **Cobb v. State**, 59 Ga. App. 695, 25 E. 2d 116 (1939), or **In re Fite**, 11 Ga. App. 665, 76 S. E. 397 (1912). It should particularly be pointed out that such is true of the statement,

> "... the question whether the conduct complained of interfered with the administration of justice in a pending case is not involved" (R. 64).

This quote was taken from a long statement in **Cobb v. State**, supra, quoted in the Wood case. Petitioner's brief, on the other hand, attempts to present this statement as an original, holding on the merits in this case (Brief, p. 11), which is not so, for immediately following this quote, the Court of Appeals clearly stated the basis of its holding, to wit:

> "... It is obvious that this was intended to interfere with or obstruct the grand jury in its investigation of the charges which the court had given to them. In this respect, it is the proper function of the judge to charge the grand jury. It is not the prerogative of the sheriff to either charge the jury or to interfere with the judge's charge."

2. The Court Below Properly Applied the Clear and Present Danger Test.

It is well settled that, "The grand jury is an arm of the court, and its *in camera* proceedings constitute a judicial inquiry." **Levine v. United States**, 362 U. S. 610, 4 L. Ed. 2d 989 (1960); **United States v. Smyth**, 104 F. Supp. 283 (D. C. Cal. 1952); **Gates v. State**, 73 Ga. App. 824, 38 S. E. 2d 311 (1946); **Cook v. Sikes**, 210 Ga. 722, 82 S. E. 2d 641 (1954); **In re Presentment of Ellison**, 44 F. Supp. 375 (D. C. Del. 1942), aff'd. 133 F. 2d 903 (c. c. 3rd 1943), cert. den. 318 U. S. 791. It therefore follows as "an inevitable consequence" that the court has the power and is charged with the duty of punishing for contempt any one whose conduct interferes with the grand jury. **Commonwealth v. McNary**, 246 Mass. 82, 140 N. E. 255 (1923); **United States v. Providence Tribune Co.**, 241 Fed. 524 (D. C. R. I., 1917); **Commonwealth v. Chmielinski**, 246 Mass. 55, 140 N. E. 258 (1923); **Ex Parte Shuler**, 210 Cal. 377, 292 P. 481, 493 (1930); **In re Michael**, 146 F. 2d 627 (c. c. 3rd 1944), rev'd. on other grounds, 326 U. S. 224, 90 L. Ed. 30 (1945); **In re Presentment of Ellison**, supra; **Commonwealth v. Butler**, 171 Pa. Super. 350, 90 A. 2d 838, 841 (1952).

Secondly, "Interference with the proceedings of a grand jury in the performance of its functions is as truly a contempt of court as is interference with the proceedings of a petit jury, either in the course of a trial or during its deliberation". **United States v. Providence Tribune Co.**, supra (241 Fed. at 525); **Commonwealth v. McNary**, supra; **Commonwealth v. Crans**, 2 Clark 172, 183, 3 Pa. Law J. 442, 451 (1844).[2] The Court is deemed to be

[2] In this well-reasoned case, the Court declared that:

"The grand jury being officers of the Court, and under its legal direction, are entitled to its protection from assaults of every kind, whether the effort is designed to influence them on question of law or fact, or intended to disturb them in their deliberations when assembled in court or the jury-room, or to

"present"[3] in any part of the place set aside for the transaction of its business. **Re Savin**, 131 U. S. 267, 272, 33 L. Ed. 150 (1889); **In re Chaifetz**, 68 A. 2d 228 (D. C. Mun. Ct. of App. 1949); **People v. Hagopian**, 408 Ill. 618, 97 N. E. 2d 782 (1951); **People v. Parker**, 328 Ill. App. 46, 65 N. E. 2d 457 (1946), aff'd 333 U. S. 571; **In re Caruba**, 139 N. J. Eq. 404, 51 A. 2d 446, aff'd 55 A. 2d 289 (1947); **In re Attachment for Contempt of Mack**, 37 West. 127, 17 Som. 221; **State v. Goff**, 228 S. C. 17, 88 S. E. 2d 788 (1955); **Harding v. McCullough**, 236 Iowa 556, 19 N. W. 2d 613, 617 (1945), for "The place of justice is a hallowed place, and therefore not only the bench, but the foot pace and precincts and purprise thereof, ought to be preserved without scandal and corruption", Francis Bacon, "Of Judicature" (No. LVI), quoted in **People v. Higgins**, 16 N. Y. S. 2d 302, 307, 173 Misc. 96 (1939).

It is the function of the Court to charge the grand jury, and it follows that no one else has any right to undertake to do so, **United States v. Kilpatrick**, 16 Fed. 765, 770 (D. C. N. C. 1883); **Commonwealth v. Crans**, supra, and in charging the grand jury, the trial court has a very large discretion, and he may call to its attention any unusual state affecting the welfare of the community. **Carr v.**

menace them by threats of violence for the manner in which they shall perform their duty, or to control, influence, or bias their judgment upon any question likely to come before them for deliberation. To attempt anything of the kind is criminal in the eye of the law. It is a high contempt of the Court, an obstruction of the administration of justice, and the tendency of all such acts is to corrupt the fountains of judicial tribunals, which for the safety of society should always be kept pure, and even free from suspicion."

[3] This court's interpretation of "presence of the court" as used in 18 U. S. C. A. 401, established in *Nye v. United States*, 313 U. S. 33, 85 L. Ed. 1172 (1941), was based on statutory and not constitutional grounds. See 30 Geo. L. J. 406, 408 (1942). Similar language in Ga. Code 24-105 (appendix) was construed as having a causal connotation rather than a geographical one. See *Atlanta Newspapers, Inc., v. State*, 216 Ga. 309, 116 S. E. 2d 580 (1960), noted, 14 Vand. L. R. 1013 (1961).

State, 28 Ala. App. 466, 187 So. 252 (1939); **United States v. Smyth**, 104 F. Supp. 283, 292 (D. C. Cal. 1952).

So vitally important are grand jury proceedings deemed by this court, that a conviction itself valid will be set aside where the grand jury proceedings resulting in the indictment were tainted. See **Eubanks v. Louisiana**, 356 U. S. 584, 2 L. Ed. 2d 991 (1958), and cases cited, particularly **Cassell v. Texas**, 339 U. S. 282 (1950), and in this respect, it must be recalled that "Society also has a right to a fair trial". **Fay v. New York**, 332 U. S. 261, 91 L. Ed. 2043 (1947).

Attempts to influence grand jurors are made criminal by federal law, 18 U. S. C. A. 1504, and the authorities uniformly uphold contempt convictions based upon communications with or attempts to influence a grand jury. **People v. Parker**, 397 Ill. 305, 74 N. E. 2d 528 (1947), aff'd, 334 U. S. 816, 92 L. Ed. 1747 (1948), noted, 39 Jour. Cr. L. 72 (1948); **People v. Parker**, 374 Ill. 524, 30 N. E. 2d 11 (1940); **People v. Doss**, 382 Ill. 307, 46 N. E. 2d 984, cert. den. 320 U. S. 762 (1943); **Hitzelberger v. State**, 173 Md. 435, 196 A. 288, 291 (1938); **People v. Severinghaus**, 313 Ill. 456, 145 N. E. 220 (1924); **12 Am. Jur. 403**, Sec. 21, and see 38 Jour. Cr. L. 43 (1947). As stated in **Dukes v. United States**, 90 F. 2d 840, 842 (C. A. 4th 1937), in upholding punishment by contempt against a private citizen under what is now 18 U. S. C. A. 1504, it was said:

> "And one who knowingly sends a letter to a grand jury which shows upon its face the intention that it shall be considered with respect to a pending case, cannot be heard to say that he did not attempt to influence the grand jury thereby, as the attempt to influence is inherent in the act of knowingly sending such a letter."

See also **Commonwealth v. McNary**, supra.

Moreover, as stated in **United States v. Providence Tribune Co.**, 241 Fed. 524, 528:

> "It makes little difference whether information as to the grand jury is conveyed by direct statement, or by the collection and publication of circumstantial evidence of such character as to enable the public to draw a natural inference. The disclosure and its extent, and not the special mode of disclosure of what the law requires to be done in secret, is the important thing."

All of this is not to gainsay the equal importance to a free society of untrammeled speech, for the "clear and present danger" test has been held applicable to contempt of court in preference to the "reasonable tendency" test. **Bridges v. California**, 314 U. S. 252, 86 L. Ed. 192 (1944); **Craig v. Harney**, 331 U. S. 367, 91 L. Ed. 1546 (1947); **Pennekamp v. Florida**, 328 U. S. 331, 90 L. Ed. 1295 (1946). But neither is freedom of speech itself absolute. **Kingsley Books, Inc., v. Brown**, 354 U. S. 436, 441, 1 L. Ed. 2d 1469 (1957), for "Civil liberties, as guaranteed by the Constitution, imply the existence of an organized society maintaining public order without which liberty itself would be lost in the excess of unrestrained abuses". **American Communications Association v. Douds**, 339 U. S. 382, 399, 94 L. Ed. 925 (1950), quoting **Cox v. New Hampshire**, 312 U. S. at 574.

In each case, as stated in **Speiser v. Randall**, 357 U. S. 513, 520, 2 L. Ed. 2d 1460 (1958):

> "When we deal with the complex of strands in the web of freedoms which make up free speech, the operation and effect of the method by which speech is sought to be restrained must be subjected to close analysis and critical judgment in the light of the particular circumstances to which it is applied."

When justified by "subordinating valid governmental interests", state action limiting the unfettered exercise

of speech has been upheld in an attempt to reconcile conflicting interests. **Konigsberg v. State Bar of California**, 362 U. S. 910, 4 L. Ed. 2d 618 (1961).

Little need be said here as to the valid interest of Georgia in an impartial, unhampered administration of its criminal laws, and more particularly those which seek to preserve the sanctity of its electoral processes. See dissenting opinion of Mr. Justice Douglas in **Hannah v. Larche**, 363 U. S. 419, 4 L. Ed. 2d 1307 (1960). The Georgia statute given in charge to the grand jury here (Sec. 34-9907), little different from a federal statute, 18 U. S. C. A. 597, strikes at an evil which unfortunately has not been of academic interest only.[4]

[4] As early as 1896, Fulton County prohibited use of hired workers and hired carriages at primary elections. See the *Atlanta Constitution*, March 19, 1896. In his annual message to the Georgia General Assembly on October 24, 1900, Governor A. D. Candler deplored the evils of exploitation of Negro citizens by vote buyers, and called for additional legislation. See *Ga. House Jour. 1900*, p. 10. Within the year, one Negro candidate for public office in Atlanta has charged the Negro Voters' League of receiving money for the endorsement of an opposing candidate. See Atlanta Journal, Sept. 12, 1961, p. 2. A professor of political science at Emory University stated the situation as he found it a few years ago: "Vote selling and vote buying is found in elections in the State, and since 1929, this evil has increased in certain counties. Very few counties are free from this corrupt practice. William D. Upshaw in an election in old Campbell County accused the friends of his opponent of spending a large sum of money for votes in 1926. In the same county in 1928, a friend of one of the candidates stood near the polls with his pocketbook offering to buy votes. Not being successful, he went into one of the rural precincts to buy votes. A leading politician in Lee County in 1932, spent more than $100 buying votes for a friend who was a candidate for a county office. The price paid for votes varies in different counties of the State, and is often regulated by the interest manifested in an election. In 1932, votes sold for fifty cents in Terrell County, one dollar in Fulton, and five dollars in Lee County, while whiskey was exchanged for votes in Dougherty and Baker Counties. The average price is usually a dollar." Lynwood-M. Holland, "The Conduct of Elections in Georgia" (1937), a thesis submitted to Emory University. See also Arnett, Populist Movement in Georgia, Columbia University Press (1922), pp. 183-4; Coulter, The South During Reconstruction (1947), pp. 350, 357.

If the grand jury investigation here had terminated, no one would contest the legal right of petitioner to speak his piece, whatever one might think of it from the standpoint of good taste. But here the statements were issued at the very time the grand jury was conducting its investigation and had before it voting records and tabulations (R. 42-4). By their very terms, petitioner's articles were calculated to reach the jury while it was deliberating (R. 12, 17, 19), and it appears that in fact they did (R. 45). Even if it be assumed that petitioner's activities were under consideration, it follows that he had no right to communicate his contentions "because of the disruptive influence their injection would have on the proceedings . . . ." **Hannah v. Larche**, supra.

The **Bridges, Craig, and Pennekamp** cases do not require a reversal here.

The manifest difference is that whereas all those cases involved either statements calculated **merely to influence the judge**[5] or else comments on judicial action **already taken**,[6] the present case concerns language uttered by a public officer in the court house calculated to influence the grand jury in an investigation which it was at the very moment considering. While a judge is "expected to be a man of ordinary firmness and character",[7] there is no such presumption as to jurors.[8] There has been no case to come before this Court subsequent to the Bridges case

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[5] Bridges v. California; Craig v. Harney.

[6] Pennekamp v. Florida (328 U. S. at 348). See 41 Ill. L. R. 696 (1947).

[7] Justice Holmes in Toledo Newspaper Co. v. United States, 247 U. S. 402, 424, 62 L. Ed. 1186 (1918).

[8] See Comments, 90 U. Pa. L. R. 617 (1942); 19 N. Y. U. L. Q. 307, 310 (1942); 45 Mich. L. R. 513 (1947); "A Re-Examination of Bridges v. California", 23 Alb. L. R. 61 (1959).

involving a jury trial,[9] unless it be **Maryland v. Baltimore Radio Show**, 338 U. S. 912, 94 L. Ed. 562 (1950), but even in that case, the trial was not in progress when the publication was made. This, of course, is not to say that the clear and present danger test does not apply to jury trials,[10] but obviously, it necessarily follows that what would constitute such a danger in a non-jury matter might well do so in a pending jury case. The complex system represented by the rules of evidence bear mute evidence to this fact.

"Clear and present danger" does not mean that "trials are like elections, to be won through the use of the meeting-hall, the radio and the newspaper",[11] and,

> "It does not follow that public comment of every character upon pending trials or legal proceedings may be as free as a similar comment after complete disposal of the litigation."[12]

Moreover,

> "When a case is finished courts are subject to the same criticism as other people; but the propriety and necessity of preventing interference with the course of justice by premature statement, argument or intimidation hardly can be denied."[13]

Even should it be assumed that the grand jury charge as given was wrong, petitioner can be adjudged in contempt for interference therewith. **United States v. United**

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[9] Notre Dame L. R. 165 (1950). See also concurring opinions of Justices Jackson and Frankfurter in Shepherd v. Florida, 341 U. S. 50, 55, 95 L. Ed. 740 (1951).

[10] 23 Alb. L. R. 61 (1930).

[11] Bridges v. California, supra (314 U. S. at 271).

[12] Pennekamp v. Florida, supra (328 U. S. at 346).

[13] Patterson v. Colorado, 205 U. S. 454, 463, 51 L. Ed. 879 (1907).

Mine Workers, 330 U. S. 258, 294, 91 L. Ed. 884 (1947). "Even an erroneous ruling or order of a court that has jurisdiction to act does not justify contemptuous conduct . . ." **Harding v. McCullough**, 236 Iowa 556, 19 N. W. 2d 613, 616 (1945). But the charge here was entirely proper in every respect. The trial court simply called to the attention of the grand jury a Georgia criminal statute, and the need for its enforcement. This Court can not assume that the circumstances and conditions referred to below do not in fact exist. Political organizations are not exempt from state laws prohibiting vote-buying simply because Negro citizens are involved.

Moreover, contrary to the inference sought to be made by petitioner's brief, the charge below was not "an inflamatory, prejudicial and derogatory attack . . . on the voters of a minority race group" (Brief, p. 7). A fair reading of the charge clearly indicates that it was aimed at the candidates and political bosses who buy and sell votes, and not the voters themselves: "There are accusations that **candidates** for public office have paid large sums of money to **certain leaders of the Negro** in an effort to gain their favor and get the Negro vote" (R. 7).

The inference is also made (Brief, p. 3) that the charge implied that money spent for advertising in solicitation of the Negro vote was tantamount to a purchase of votes, but reading this portion of the charge in its context demonstrates otherwise: "This money is **supposedly** accepted for advertising . . ." (R. 7). In other words, the court was saying that the money was paid under false pretenses.

Nor did the charge imply that all bloc voting was illegal; viz.:

> "We do not mean to say to you that Negroes do not have the right to bloc vote if they wish to do so, if their self interest is a factor in their decision to support a certain candidate, instead of a consideration

simply to the person or persons controlling their votes."

"Issues, principles or policies may, under some circumstances, justify certain groups in casting similar votes but if the vote is a right it is an individual right and carries with it the duty and obligation of intelligent determination by the individual claiming the right. There is no right of a vote to be bartered, nor is there any right to a vote to be cast in bloc merely at the whim or caprice of domineering individuals or conspiratorial organizations" (R. 7).

Under the facts of this case, the evidence was sufficient to sustain a conviction under the "clear and present danger" test even as against a private individual. *A fortiori*, where as here, the accused was himself a public officer sworn to attend upon and serve the very body he was convicted of attempting to influence. A sheriff is an officer of court, subject to its orders and discipline, **United States v. Smyth**, 104 F. Supp. 283 (D. C. Cal. 1952); **People ex rel. Rusch v. Levin**, 305 Ill. App. 142, 26 N. E. 2d 895, 898 (1939), and he long has been held subject to punishment by way of contempt under circumstances where a private citizen would not, **Commonwealth ex rel. Davis v. Malbon**, 195 Va. 368, 78 S. E. 2d 683 (1953), 4 Blackstone's Commentaries 283, and in this connection, "public officers must always be in the forefront with the grand jury in rooting out evil and exposing wrong doing." **Barbuto v. Silver**, 186 N. Y. S. 2d 1018, 1023 (1959). The office of sheriff is of ancient origin, the term itself meaning "county keeper", **Anderson on Sheriffs**, Sec. 2, and as pointed out by Judge Townsend below, a sheriff is associated in the minds of many lay people with the "pronouncement as well as the enforcement of the law" (R. 72) and his acts and doings are likely to produce an exaggerated effect on the public.

Under Georgia law, "The office of sheriff carries with it . . . all of its common law duties and powers except as modified by statute . . ." and he is required to perform such duties as necessarily appertain to his office. **Elder v. Camp**, 193 Ga. 320, 18 S. E. 2d 622 (1942); **Foster v. Vickery**, 202 Ga. 55, 42 S. E. 2d 117, 120 (1947). Sheriffs are expressly required to "execute and return the processes and orders of the courts", and to attend by themselves or deputies upon all sessions of the superior court. Ga. Code, Sec. 24-2813. It is a matter of common knowledge in Georgia that sheriffs attend upon grand juries, executing their subpoenas and other processes, assist in their investigations, and in general render such assistance to the court and grand juries as may be required.

The law of Georgia specifically provides for contempt proceedings against its officers, Secs. 24-104, 24-105, as does federal law, 18 U. S. C. A., 401 (See Appendix). The **Cammer** and **Sawyer** cases, cited at page 12 of petitioner's brief have no application, as those cases do not deal with one who is strictly speaking, an officer of court, as so held in the **Cammer** case. Since the character of the person making a particular communication has a direct relevance to the effect that such communication is likely to produce, this clearly is one circumstance pertinent to the question of contempt, as held below (R. 69).

Stated differently, the "clear and present danger" test operates differently upon a state official issuing press releases from the same building in which the grand jury is deliberating than it does upon a private citizen completely divorced from the Court.

3. Proof That the Interference Was Successful Is Not Necessary.

While petitioner's demurrers and responses filed in the trial court below recognized that contempt could be estab-

lished either from proof of actual obstruction or circumstances indicating a clear and present danger thereof (R. 22, 24, 30, 32, 39), the Brief filed in this court now takes the bold position that actual obstruction must be proven. The court below held to the contrary (R. 51), and this holding is unquestionably correct, for it is well settled that "The success or failure of an attempt to influence the jury is not the test, since no one can know what, if any, effect it had." **People v. Doss**, 382 Ill. 307, 46 N. E. 2d 984, 989 (1943), cert. den. 320 U. S. 762 (1943); **State v. McAllister**, 43 N. M. 514, 96 P. 2d 1, 3 (1939); **Ex Parte Shuler**, 210 Cal. 377, 292 P. 481, 493 (1930); **State ex rel. Giblen v. Sullivan**, 157 Fla. 496, 26 So. 2d 509, 516 (1946); **People v. Gholson**, 344 Ill. App. 199, 100 N. E. 2d 343 (1951), rev'd on other grounds 106 N. E. 2d 333, 412 Ill. App. 294 (1952); **Summers v. State**, 66 Ga. App. 648, 19 S. E. 2d 28 (1942); **Sinclair v. United States**, 279 U. S. 749, 762, 73 L. Ed. 938 (1929); **12 Am. Jur. 417**, Sec. 37, and see Mr. Justice Frankfurter's remarks in the **Bridges** case (314 U. S. at 291-2). The test is not actual obstruction, but whether "the words used are used in such circumstances and are of such a nature as to create a clear and present danger" that they will result in an obstruction of justice. **Bridges v. California**, 314 U. S. at 261. "Inherent tendency" and "reasonable tendency" are not enough (Id., p. 273), but "the substantive evil must be extremely serious and the degree of imminence extremely high before utterances can be punished" (p. 263).

Nowhere in the **Bridges**, **Pennekamp** or **Craig** cases did this Court intimate that actual obstruction must be proven, nor that an observable effect be shown to have ensued as a logical consequence of the comments. As stated in the **Bridges** case:

> "We must therefore turn to the particular utterances here in question and the circumstances of their publication to determine to what extent the substantive evil

of unfair administration of justice was a likely consequence, and whether the degree of likelihood was sufficient to justify summary punishment." (314 U. S. 271.)

Following this statement, the court reviewed the wording of the publications and noting that the editorials were published after trial and pending sentencing by the Court, whereas the Bridges telegram was published after trial when all that was pending was a motion for new trial, the Court concluded that the likelihood of these matters affecting a judge was too remote. With respect to the editorials the judge was already aware of the long-standing position of the defendant newspaper on labor disputes, and as to Bridges, the Court also must have realized independently of the telegram that a decision adverse to the Union might result in a strike.

The same approach was used in the **Pennekamp** and **Craig** cases.

To say that actual obstruction must be shown would destroy the contempt power altogether, for how would it be possible to prove it? Would such a test require a showing that immediately upon publication the grand jury rebelled and took up arms against the judge, assigning as their reason for so doing the statements of petitioner? Would it require calling each juror to testify and exploring his mental processes, as against the rule that such matters are generally privileged? See Code Sec. 59-303; **Cook v. Sikes**, 210 Ga. 722, 727, 82 S. E. 2d 641 (1954).

The test is clear and present danger, not successful obstruction.

4. Petitioner Offered No Defense of "Truth" Below.

While petitioner's demurrers asserted as one ground the failure of the petition for contempt to allege that petitioner's statements were "false or untrue" (R. 22, 30),

the response filed by petitioner failed to mention "truth" as a defense (R. 37).

Nor did petitioner at the hearing offer any proof, as to truth or anything else. The parties stipulated certain facts in writing (R. 45), and the Court permitted petitioner to file his sworn response as evidence of all the "legally admissible statements of fact contained therein" (R. 47).

Petitioner's brief now makes the remarkable claim that no evidence of truth was adduced because of the Court's having allowed amendments to the petition which rendered truth no defense, and petitioner and his witnesses "dare not, under certainty of conviction for direct contempt, appear in the actual presence of the judge to plead or prove the truth of petitioner's statements" (Brief, p. 8). There is no basis whatever for this contention. No such ruling was ever invoked or made below. The ruling of the trial court on the demurrers merely established that it was not incumbent upon the state to affirmatively negative truth, for, indeed, truth under Georgia law is an affirmative defense which must be pleaded and proven by the defendant. Code Secs. 105-708; 26-2103; Constitution of 1945, Art. I, Sec. II, Par. I; **Ivestor v. Coe**, 33 Ga. 620, 127 S. E. 790 (1925).

The reason for the amendments referred to by petitioner had nothing to do with the issue of truth. The original petition for contempt was filed July 7, 1960 (R. 4). Petitioner's statement announcing that he expected to rely upon truth as a defense was made July 8 (R. 19). The petition for contempt was thereafter amended on July 27, but this amendment, although filed 19 days after petitioner's announcement, did not add the allegations now belatedly relied upon as foreclosing any offer of proof on the issue of truth (R. 14). The amendment which petitioner claims had this effect was not filed until August 10 (R. 42), five days after petitioner had filed demurrers and response invoking the clear and present danger doctrine

as a defense (R. 21-41), and it is apparent from a reading thereof that the amendment was designed merely to remove any doubt as to the state's claim that petitioner's conduct was in fact a clear and present danger to the administration of justice.

The bill of exceptions which carried the case to the Georgia Court of Appeals assigned error merely on the overruling of the demurrers and the judgment of contempt itself. No claim was made that the Court had denied petitioner the right to prove truth as a defense, and, under Georgia law, there must be a specific assignment of error on every antecedent ruling claimed to be erroneous where a motion for new trial was not filed below. **Ga. Procedure and Practice**, Sec. 23-9, at p. 542.

In dealing with this issue the Court of Appeals' decision clearly shows that it was ruling only insofar as required under the demurrer (R. 67).

In his 30-page petition for certiorari, filed in the Supreme Court of Georgia (not printed in the record), petitioner did not mention the issue of truth. The first time it was sought to be raised was in the motion for reconsideration filed in the Georgia Supreme Court (R. 77). The Supreme Court of Georgia will not consider questions not raised in the petition for certiorari. **Drewry v. State**, 208 Ga. 239 (1), 65 S. E. 2d 916 (1951). Nor was it raised in the petition for certiorari filed in this court. Cf. Rule 23 (1) (c); **United Brotherhood v. N. L. R. B.**, 357 U. S. 93, 1 L. Ed. 2d 1186.

Therefore, having failed to raise this question below and invoke a ruling thereon, petitioner cannot be heard to complain here, for constitutional questions must be timely asserted. **Whitney v. California**, 274 U. S. 357, 362, 71 L. Ed. 1095 (1927); **Yakus v. United States**, 321 U. S. 414, 88 L. Ed. 834 (1944); **Hartford Life Ins. Co. v. Johnson**, 249 U. S. 490, 492, 63 L. Ed. 722 (1919), and reasserted at

every stage of the proceedings as required by state practice. **Dorrance v. Pennsylvania**, 287 U. S. 660, 77 L. Ed. 570 (1932).

The necessity for strict application of the rule is even more pressing here. For example, petitioner's response alleged that when the grand jury charge was made a political campaign was then underway for nomination in the Democratic primary for county offices to be held on July 20, 1960 (R. 38). But had petitioner sought to adduce proof establishing the truth of this and related allegations, respondent was prepared to prove that the grand jury charge was not directed to the county primary, but had been precipitated by an election for city council held on April 20, 1960, at which one candidate had received 1001 of 1,262 Negro votes cast, and that reliable reports indicated that this had been accomplished by payments made to leaders of certain political organizations.[14] Similarly, the response alleged that petitioner was himself a candidate, the implication being made that he was a candidate in the primary campaign then in progress (R. 38), but had the matter progressed to the evidentiary stage, it would have shown that petitioner had previously announced that he was not a candidate in the primary, and he, in fact, did not run therein.[15]

Consequently, the issue of "truth" is not presented for decision in this case. **Rescue Army v. Municipal Court**, 331 U. S. 549, 91 L. Ed. 1666 (1947).

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[14] See the Macon Telegraph, April 22, 1960. This liberal newspaper, a persistent defender of Negro rights, had editorially deplored the city council election, declaring, "This was an election where racial matters were not involved in any way. It is the most flagrant instance of actual bloc voting that has ever occurred in Macon."

[15] There were five candidates for the office of sheriff participating in the primary. Petitioner was not one of them. He had previously announced that he was leaving the Democratic Party and "might" offer for some office in the general election as a Republican candidate.

In any event, however, truth is no defense to a charge of this nature, as held by this Court in **Patterson v. Colorado**, 205 U. S. 454, 462, 51 L. Ed. 879 (1907).

VII.

CONCLUSION.

The judgment below should be affirmed.

Respectfully submitted,

EUGENE COOK,
Attorney General,

P. O. Address:
Judicial Building,
40 Capitol Square,
Atlanta, Georgia.

E. FREEMAN LEVERETT,
Deputy Assistant Attorney General of Georgia,

Elberton, Georgia.

WILLIAM M. WEST,
Solicitor General, Macon Judicial Circuit,

JACK J. GAUTIER,
Assistant Solicitor General,

Attorneys for State of Georgia, Respondent.

Court House,
Macon, Georgia.

VIII.

APPENDIX.

GEORGIA CONSTITUTIONAL AND STATUTORY PROVISIONS.

1. Georgia Constitution of 1945, Art. I, Sec. I, Par. XX (Ga. Code Ann. Sec. 2-120). **Contempts.** The power of the courts to punish for contempt shall be limited by legislative acts.

2. Georgia Code Ann., Sec. 34-9907. **Buying or selling votes, and voting illegally; competency of witnesses.** If any person shall:

1. Buy or sell, or offer to buy or sell, a vote, or shall be in any way concerned in buying or selling, or contribute money or any other thing of value for the purpose of buying a vote at any election in this State, or in any county thereof; or

(Cobb, 819. Acts 1880-1, p. 129; 1906, p. 46.)

2. If any person shall vote at any such election who has not resided in this state one year next preceding such election; or

(Acts 1878-9, p. 157.)

3. Who has not resided six months next preceding said election in the county in which he has voted; or

(Acts 1878-9, p. 157.)

4. (Repealed.)

5. Who has been convicted in any court of competent jurisdiction of treason against the state, of embezzlement of public funds, malpractice in office, bribery, or larceny, or any crime involving moral tur-

pitude, punishable by the laws of this State with imprisonment in the penitentiary, unless he shall have been pardoned,

(Acts 1878-9, p. 157.)

He shall be guilty of a misdemeanor.

On the trial of any person for offending against this section, any other person who may have participated in any violation of the provisions of the same shall be a competent witness and be compelled to give evidence; and nothing then said by such witness shall, at any time, be received or given in evidence against him in any prosecution, except on an indictment for perjury in any matter to which he may have testified. All the provisions of this section shall be applicable, so far as the same may be, to all primary elections. **The hiring of workers qualified to vote in said election or primary before or on the day of election, for the purpose of canvassing for or influencing votes in behalf of any candidate, or the being hired for said purpose, shall be a misdemeanor** (Acts 1906, p. 46).

3. Section 34-1907.1 (Supp.) **Printing, having, or possessing ballot or likeness thereof.**—No person, firm, or corporation shall print, have, or possess a ballot or ballots or any likeness of the same, except the officials having charge of the general elections, primary elections, or special elections under the laws of this State, and the electors when engaged in the acts of voting (Acts 1949, pp. 1291, 1293).

Section 24-104. **Powers of Courts enumerated.** Every Court has power—

1. To preserve and enforce order in its immediate presence, and as near thereto as is necessary to prevent interruption, disturbance, or hindrance to its proceedings.

2. To enforce order before a person or body empowered to conduct a judicial investigation under its authority.

3. To compel obedience to its judgments, orders, and process, and to the orders of a judge out of court, in an action or proceeding therein.

4. To control, in furtherance of justice, the conduct of its officers and all other persons connected with a judicial proceeding before it, in every matter appertaining thereto.

* * * * * *

5. To administer oaths in an action or proceeding pending therein, and in all other cases, when it may be necessary in the exercise of its powers and duties.

4. Section 24-105. **Powers of Courts to punish for contempt.** The powers of the several courts to issue attachments and inflict summary punishment for contempt of court shall extend only to cases of misbehavior of any person or persons in the presence of said courts or so near thereto as to obstruct the administration of justice, the misbehavior of any of the officers of said courts in their official transactions, and the disobedience or resistance of any officer of said courts, party, juror, witness, or other person or persons to any lawful writ, process, order, rule, decree, or command of the said courts:

1. Provided, that in no case shall any person be imprisoned for contempt for failing or refusing to pay over money under any order, decree, or judgment of any court of law or any other court of this State, when he denies that the money ordered or decreed to be paid over is in his power, custody, or control, until he has a trial by jury as herein provided.

2. The allegation of the plaintiff, receiver, referee, or any other person or persons that the defendant has a certain sum of money within his power, custody, or

control, which he is withholding or refuses or fails to pay over, and the denial of the defendant that he has the power, custody or control of said money, shall form the issue to be tried by the jury, and the jury shall pass upon the fact.

3. The judge presiding shall cause questions to be propounded in writing to the jury, and every question propounded shall be answered by the jury in their verdict; and upon the answers made the judge shall adjudge or decree whether the defendant be or not in contempt, with the right to either party to move for a new trial and carry the case to the Supreme Court by bill of exceptions as in other civil cases.

4. The issue being made, a bond may be required in the discretion of the court for the appearance of the defendant for trial, which bond shall be of sufficient size to procure the attendance of defendant to appear and answer the final judgment or decree in the case, which shall be approved by the judge, and on failure to appear the bond shall be forfeited as in criminal cases, and in default of bond the defendant may be committed to jail for safekeeping until trial. (Acts 1892, p. 65.)

5. Section 24-2813. **Duties of Sheriffs.** It is the duty of the sheriff—(Act 1799, Cobb, 574, Act 1810, Cobb, 577, Act 1818, Cobb, 858, Act 1820, Cobb, 480, Act 1823, Cobb, 512. Acts 1853-4, p. 28.)

1. To execute and return the processes and orders of the courts, and of officers of competent authority, it not void, with due diligence, when delivered to them for that purpose, according to the provisions of this Code.

2. To attend, by themselves, or deputies, upon all sessions of the superior court of the county, and the

court of ordinary whenever required by the ordinary, and never to leave said courts while in session without the presence of one or both of said officers, if required, and to attend in like manner at the place of holding an election at the county site, on the day of an election, from the opening to the closing of the polls, and to take under their charge all under-officers present, as police to preserve order.

* * * * * * *

6. Section 24-2814. **Defaulting sheriffs or deputies; contempt of court; Removal.**—If any sheriff or deputy fails to comply with the provisions of section 24-2813, he shall be fined for a contempt, as the clerk of the superior court is in similar cases. Section 24-2724, as to removal, shall also apply to sheriffs.

7. Section 59-304. **Duties of Grand Jury.** Grand jurors are bound only to notice or make presentments of such offenses as may or shall come to their knowledge or observation after they shall have been sworn; nevertheless they have the right and power, and it is their duty as jurors to make presentments of any violations of the laws which they may know to have been committed at any previous time, which are not barred by the statute of limitations. (Cobb, 553.)

FEDERAL STATUTORY PROVISIONS.

8. Section 18, U. S. C. 401. **Contempt.**

"A Court of the United States shall have power to punish by fine or imprisonment, at its discretion, such contempt of its authority, and none other as—

(1) Misbehavior of any person in its presence or so near thereto as to obstruct the administration of justice;

(2) Misbehavior of any of its officers in their official transactions;

(3) Disobedience or resistance to its lawful writ, process, order, rule, decree or command."

9. Section 18, U. S. C. 1504. **Influencing grand or petit jurors.**

Whoever attempts to influence the action or decision of any grand or petit jurors of any court of the United States upon any issue or matter pending before such juror, or before the jury of which he is a member, or pertaining to his duties, by writing or sending to him any written communication, in relation to such issue or matter, shall be fined not more than $1,000.00, or imprisoned not more than six months, or both.

Nothing in this section shall be construed to prohibit the communication of a request to appear before the grand jury.

10. Section 18, U. S. C. 597. **Influencing Voters.**

Whoever makes or offers to make an expenditure to any person, either to vote or withhold his vote, or to vote for or against any candidate; and

Whoever solicits, accepts, or receives any such expenditure in consideration of his vote or the withholding of his vote.

Shall be fined not more than $1,000.00 or imprisoned not more than one year or both; and if the violation was wilful, shall be fined not more than $10,000.00, or imprisoned not more than two years, or both."